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HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1094th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 22 October 1991, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Second periodic report of Morocco (CCPR/C/42/Add.10) (continued)

1. The CHAIRMAN recalled that the consideration of the second periodic report of Morocco had begun at the Committee's fortieth session but its completion had had to be deferred until the current session.

2. At the invitation of the Chairman, Mr. Benhima, Mr. Serghini, Mr. Atmani and Mr. Laghmari (Morocco) took places at the Committee table.

3. Mr. BENHIMA (Morocco) said that the participation for the first time in the Moroccan delegation of Mr. Serghini of the Directorate of Staff Training, Codification and Public Freedoms in the Ministry of the Interior, together with that of Mr. Atmani, President of the Chamber of the Supreme Court, seconded to the Central Administration of the Ministry of Justice, showed the interest attached by His Majesty's Government to the Committee's activities and to the quality of the dialogue with Committee members. The recently-created Directorate under Mr. Serghini was principally responsible for ensuring respect for the legal provisions regarding public freedoms by the various parties concerned (the central administration, the local authorities and individuals). It also had the task of opposing any attempt to impede the application of the law.

4. Various measures had been taken during the year to speed up the country's progress towards the strengthening of a state of law that would guarantee to everyone the exercise of rights with strict observance of the attendant obligations, and would assure the national community of cohesion and harmony while respecting inviolable institutions and values. Such measures also helped to ensure the practical application of what had been achieved. The Advisory Council on Human Rights had been established in May 1990 to assist His Majesty the King in all human rights questions. In November 1990, his delegation had provided the Committee with full information on the Council's composition, operation and field of activities. It had noted the interest of Committee members in that institution, whose considerable achievements and ability to fulfil its role had made it a much-sought-after partner in various bodies. Its participation in the symposium organized in Paris early in October by the French National Commission on Human Rights, under the auspices of the United Nations Centre for Human Rights, was the most recent example.

5. On 12 July 1991, Parliament had adopted a bill for the establishment of administrative tribunals in the various regions of the Kingdom. The Act had been considered by parliamentarians of all persuasions as an achievement and an event of political importance. The Ministry of Justice was taking steps for the recruitment of staff and for personnel training to provide for the operation of those new courts. In accordance with the suggestions and recommendations of the Advisory Council on Human Rights, His Majesty's Government had submitted to Parliament a bill for the amendment of various articles of the Code of Penal Procedure designed in particular to reduce the

length of police custody and pre-trial detention. The bill had been adopted unanimously by Parliament. His delegation would give further details of the Act in its replies to the questions under section VII of the list of issues.

6. Other recommendations of the Council, approved by His Majesty the King and put into effect, should lead to improved monitoring of pre-trial detention, an increase in judicial police staff, improved living conditions in detention centres, priority handling of cases of pre-trial detention, observance of time-limits for the handling of cases submitted to the Special Court of Justice, and post-mortem examinations in cases of death in custody when there were indications that the death resulted from ill-treatment.

7. In the fields of information and education and training, which played a dynamic role in the promotion of and respect for human rights, Morocco had organized seminars and round tables on human rights topics. Moroccan newspapers had gradually published the Arabic translation of the summary records of the Committee's meetings on 7 and 8 November 1990 dealing with part of the second periodic report of Morocco. They had earlier published the text of the report itself, followed by comments, observations and views of individuals, non-governmental organizations and human rights associations.

8. The teaching of humanitarian law and human rights had been extended to such institutions as the Management Training School, the Royal Police Institute, military academies and police academies. A human rights section had been established in the National Institute for Judicial Studies under the Ministry of Justice, which provided training for judicial and prison officials.

9. True to the tradition of clemency based on Islamic values, and as part of the exercise of the right to pardon which the Sovereign observed on the occasion of religious or national festivals, a number of detainees and prisoners had been released during 1991. On 12 July, for example, following an initiative by the Royal Advisory Council for Saharan Affairs, His Majesty had granted a pardon to persons who had been arrested in military operational and security areas on the ground of collusion with enemies who were a threat to the territorial integrity of the Kingdom. In August 1991, some 40 prisoners had been released before the expiry of their term of imprisonment. Those pardons had been granted as a result of a memorandum submitted to His Majesty the King by the Advisory Council on Human Rights, in accordance with the provisions of the Dahir governing that institution. All those measures had been reported to the Centre for Human Rights, whose secretariat had no doubt disseminated them as widely as possible.

10. In his address to Parliament on the opening of its autumn session, His Majesty the King had stated that the methodology of democracy was dialogue, not only for its own sake but in order to attain the desired objectives, and that Morocco's devotion to dialogue and methodology must be flexible in all phases and all fields - social, economic and political. Emphasizing the value and scope of laws regulating the exercise of individual and collective freedoms in Morocco, the King had stated that Morocco was ready to move with the times and expand its horizon with respect to human rights.

11. The CHAIRMAN thanked the representative of Morocco for his statement and invited him to respond to the questions raised in the list of issues, beginning with section VII.

VII. Liberty and security of the person (article 9)

(a) What remedies are available to persons (or their relatives) who believe that they have been detained wrongly? How effective are those remedies?

(b) How quickly after arrest is a person's family informed?

(c) What is the maximum legal period of detention without trial? Is there any provision for a regular review by a court of such detention?

(d) Has the examination of the draft reform of the Moroccan Criminal Code, mentioned in paragraph 53 of the report, been completed? If so, with what results?

12. Mr. BENHIMA (Morocco) said that it was important to distinguish between detentions that had taken place without trial or outside the judicial framework and those which followed a sentence. In the first case, irregularities committed at the pre-trial stage were strictly regulated by the Code of Criminal Procedure and other pre-trial rules laid down by the judicial authority. Any deliberate abuse of authority or any offence committed in the exercise of that authority could be the subject of criminal proceedings, but no such proceedings were taken in the case of an error in the otherwise regular exercise of such powers.

13. The second case concerned detentions following a sentence or judicial decision subsequently found to have been erroneous. In such a situation, only compensation was normally granted, but if the miscarriage of justice arose from a lack of impartiality, corruption or suppression of evidence on the part of the judge, criminal proceedings would follow. In both cases, if an error had been committed by an official on duty, action for compensation could be taken under article 79 of the Code of Obligations and Contracts. A remedy was available against any official who had committed an act of deliberate abuse, but inadvertent acts were not subject to criminal or civil punishment.

14. The question of the time taken to inform a person's family following arrest was regulated by the new Act No. 6790, which supplemented article 69 of the Code of Civil Procedure. Under that Act, the judicial police must inform the family of the arrest without delay and must submit a daily list of persons in custody to the Public Prosecutor's Office or to the court of appeal. In all cases, the attorney of the court of first instance and the judicial authorities responsible for monitoring custody must inform the family if the judicial police had not done so.

15. Mr. ATMANI (Morocco) said that Act No. 6790 amended articles 68, 69, 76, 82, 127 and 154 of the Code of Criminal Procedure to make them more liberal. Under article 68, custody could not exceed 96 hours, renewable only once on the express authority of the Public Prosecutor's Office. Under article 69, the police officer had to inform the

family of the person taken into custody of his arrest and the list of persons taken into custody had to be sent to the Public Prosecutor within 24 hours. Article 6 provided broad guarantees of impartiality for the accused person and his counsel. In the case of a flagrant offence or of failure to provide representation, the Public Prosecutor could either place the accused person in custody subject to action to carry out an interrogation, to inform him of the offence of which he was accused and to advise him that he had the right to a defence counsel; or could release him on bail. The defence lawyer had the right to attend the interrogation before the prosecutor, who must allow the accused person to be examined by a doctor if he so requested.

16. Under article 127, the accused person had to be informed of the charge against him and he could be examined by a doctor. Under article 154, remand in custody, which was used only in exceptional circumstances, was confined to two months, extendable five times subject to a special order, the reasons for the extension being given on each occasion. If no acceptable reasons were given, the detainee must be released. In the case of a flagrant crime not punishable by the death sentence or life imprisonment, the prosecutor must interrogate the accused person as to his identity and inform him of his right to a defence counsel and of the offence of which he was accused. If he was unable to appoint a defence counsel, the president of the criminal court must do so. The defence counsel had the right to be present at the interrogation, to communicate freely with the accused person and to examine the file on the case. If the offence carried a penalty of life imprisonment or death, the accused person, who enjoyed all the rights mentioned earlier, was referred back to the examining magistrate.

17. Moroccan justice was concerned to ensure respect for the body of principles supporting social justice, the principle of equality before the law, the independence of the judiciary and impartiality of jurisdiction, the competent training of magistrates, defence of victims' interests, presumption of innocence, respect for human dignity and free and equitable judgement. Liberty and security of the person were effectively and comprehensively guaranteed in Morocco.

18. Miss CHANET welcomed the Moroccan delegation. She had listened with interest to the account of the reform of penal and administrative procedures. Among the issues that had been left pending since the Committee had begun its consideration of the second periodic report of Morocco was the question of detention conditions. With respect to the detention of the Oufkir family, the Moroccan delegation had stated that the juridical conditions were left to the judgement of His Majesty the King. The Committee had pointed out that the conditions of detention for a State party were determined by article 9 of the Covenant, which required them to be regulated by law and not by the executive power. They must be neither unlawful nor arbitrary. The Committee was responsible for monitoring the performance of States parties in implementing the Covenant, particularly article 9, and the conditions of detention must not be concealed from it. She wished to know what had happened to the Oufkir family, whether they were still detained and, if so, what legal conditions governed their detention.

19. In November 1990, she had raised the question of conditions in the Tazmamart prison and the Moroccan delegation had replied that it was unaware of the existence of a secret detention centre there but would seek information on the subject. She asked what information it had been able to obtain. She also wished to know the whereabouts of the military officers sentenced on 29 March 1972 in the Skirat trial and on 7 November 1972 in the Kenitra trial. She asked whether the 61 officers concerned had been dealt with in accordance with the law and with United Nations principles, whether a list of those sentenced was available, and the date of any releases or deaths. According to her information, 24 had died and the fate of the remaining 37 was unknown.

20. Mrs. HIGGINS said that she had listened with interest to the introductory comments and replies of the Moroccan delegation. She had understood Mr. Atmani to say that when an abuse had taken place in custody proceedings, a remedy would be available, but that there was no remedy in the case of error. She would be interested to know what difference there was between an abuse and a mere error in proceedings.

21. On question (c), the Moroccan delegation had explained that express consent was needed for any extension of custody beyond the permitted time, but she had been disturbed to hear that the initiative lay with the prosecution. She understood that the Court of Penal Procedure limited the length of detention without a written order to 48 hours with a 24-hour extension, but that there could then be further virtually unlimited 24-hour extensions by reference to the judiciary. She asked whether such extensions were monitored and what percentage of persons arrested were subject to such extended custody. The extended periods could be doubled in the case of a person suspected of having endangered the security of the State. She understood that articles 152-165 of the Code of Criminal Procedure provided that a person could be held in preventive detention for four months before being brought to trial, and the Moroccan delegation had explained that five extensions were permitted, after which the person concerned had to be released. That meant that a person could be held for nearly two years, which seemed excessively long by normal standards and in the light of the requirements of article 9 (3). She asked what percentage of prisoners were kept in such extended detention.

22. She was also concerned about the lack of access to legal counsel, families and medical examinations in the preliminary phase. There was no right to representation by a lawyer before the accused person was brought before an investigating judge in a court of first instance. Access to counsel was critical for controlling abuse, and because judges relied on official police reports for their decisions. Under article 291 of the Code of Penal Procedure, a police statement had to be accepted as evidence unless there was proof to the contrary. That not only ran counter to the burden of proof requirements under article 14 (2) of the Covenant but was of deep concern when confessions might be obtained under torture or when there was doubt as to the propriety of the police's conduct. She asked whether the new bill limiting the duration of pre-trial detention and preventive detention had yet come into effect and, if not, what was the reason for the delay. What provisions did it contain with respect to time-limits, access to lawyers and the question of police statements accepted as evidence?

23. On the question of the three prisons about which the Committee had expressed anxiety - Tazmamart, Kalla M. Gouna and Derb Moulay Cherif - she understood that there had been some releases from Tazmamart but she wished to know what prisoners remained, whether those held there had been imprisoned subsequent to charges and a trial, whether the prisons could now be visited and whether they were now under the jurisdiction of the Ministry of Justice. The Moroccan delegation had stated in 1990 that there were no such prisons within the prison system, but she wished to know whether they had now been brought within that system.

24. Mr. SADI said the fact that Morocco had sent such a high-level delegation was proof of the importance which it attached to its relations with the Committee. He hoped that in future the Moroccan delegation would also include people who could provide information regarding the practical procedures followed in Morocco so that the dialogue could proceed beyond the level of theory. He welcomed the reforms to Moroccan law which had been described.

25. In his view the problem lay not in Government policy but in the discrepancies between policy and the application of the law. Available information indicated that there were gaps and the question was therefore to identify the causes that had produced those discrepancies even after new procedures had been introduced. He would like to know in particular whether the discrepancies might be due to the fact that the police were not fully aware of the new laws and policies and the fact that the country's international obligations had the force of law in Morocco. It seemed that attempts were being made to provide training courses for the police and he hoped that those would help to reduce the gaps. He would however welcome examples of proceedings taken against the police in cases of arbitrary detention and of disciplinary measures applied.

26. Mr. PRADO VALLEJO said that the issues raised in section VII were among the most controversial in terms of the protection of human rights in Morocco and were the cause of much concern; it was his earnest hope that the delegation of Morocco would provide some explanations with particular reference to detainees.

27. In general it would seem that Moroccan law was consistent with the Covenant but, as Mr. Sadi had pointed out, there was a gap between law and practice, particularly on the issues of detention, arbitrary imprisonment, protracted proceedings and remedies, where there was much room for improvement.

28. His first question was whether there were currently or had been in the recent past secret detention centres. A fundamental principle of the Covenant was that detention must be in public places. There were reports that there were such secret detention centres in Morocco at Tazmamart and also in Casablanca and Rabat and that former military personnel continued to be detained there without their relatives or the population at large knowing anything about them. For example, it had been reported that 61 former military personnel had been detained at Tazmamart but that some had died during detention.

29. There had also been reports of very protracted detentions, including arbitrary detentions, in some cases going beyond the length of the sentences imposed and lasting as long as 15 or 17 years. He would like to have an explanation which would also cover cases of death in detention.

30. He had noted that the Criminal Code of Morocco had been amended and that reforms appeared to have been introduced in criminal procedures. In that connection, he would like to know whether any of the amendments had led to reforms in the field of preventive detention.

31. He would also like to know whether there were currently any political detainees and, if so, how many. There had been gratifying reports of releases, but it seemed nevertheless that there were still a number of political detainees. He understood that, towards the end of 1990, hundreds of persons had been detained in connection with demonstrations. He would like to know whether such detainees had been released and, if not, how many remained in detention.

32. He would also welcome information on conditions in places of detention. Experience suggested that, during protracted periods of detention, police abuses and torture were likely to occur. That issue required further scrutiny by the Committee. He would also like to know what measures had been taken to investigate and punish the perpetrators of such abuses. It was the responsibility of the State to end any policy on the part of the police involving abuse of the right to liberty and security of person. He would like to know what progress had been made in that field and the policy which was being followed.

33. Mr. MYULLERSON said that he had several questions regarding section VII. It was his understanding that a person could be held in preventive detention for up to two months and that the period could be extended five times, making a possible total of one year. He would like to know what was meant by preventive detention in Morocco and who were liable to be subjected to it and for what crimes. Who decided that a person should be held in preventive detention and on the basis of what justification?

34. When the Committee had been considering the fate of the Oufkir family a year earlier, he had been surprised that the delegation of Morocco had claimed that the matter was a domestic affair. He would like to know the current position of the Moroccan authorities on that issue.

35. He welcomed the freeing of detainees under a royal amnesty, but that act implied that there were in fact political prisoners. He would like to know who would qualify as a political prisoner.

36. Mr. MAVROMMATIS, noting the contribution that Morocco had made to human rights in terms of standard-setting and assistance to various treaty bodies, said it was natural that the Committee should expect close cooperation from a country which had already done so much. He thanked the delegation of Morocco for the additional updated information which it had provided.

37. His first question related to the issue of remedies: he would like to know whether there was a procedure, similar to habeas corpus or amparo, which would permit a detainee to test the legality of his detention, particularly in cases of prolonged imprisonment. The issue was particularly relevant to the three secret prisons to which a great many non-governmental organizations had referred in their reports. It was his view that there was a need for a public inquiry into such prisons in order to elucidate the facts and to check the file of every person detained in any of them.

38. His second question was whether there was a provision in Moroccan law relating to preventive or pre-trial detention; in particular, was there a maximum period of, for example, 6 or 12 months within which a person must be brought to trial? Such a provision was contained in the constitutions of a number of countries and he would like to know whether such a provision could be introduced in Morocco.

39. On the issue of remedies, it had been reported that in Morocco magistrates could, in certain circumstances, be imprisoned. Such action would be contrary to the principle that the immunity of justices from arrest was an important means of safeguarding the independence of the judiciary.

40. In conclusion, he would welcome elucidation of paragraph 57 of the report, which seemed to imply that a person could be imprisoned for failure to pay a debt.

41. Mr. AGUILAR URBINA welcomed the information furnished by the delegation of Morocco, particularly that relating to legal developments which demonstrated greater respect for human rights.

42. He was however concerned by reports from sources, including the United States State Department, to the effect that rights ostensibly guaranteed by Moroccan law were often gravely violated. There were allegations that the terms of the Convenant, particularly regarding police custody and pre-trial detention, were not being complied with and that torture continued to be inflicted on detainees. Since 1969, in cases involving State security, article 78 of the Criminal Code had empowered magistrates to extend pre-trial detention for as long as necessary, and there seemed to be no specific time-limit for it. In that connection he referred to the case of the Oufkir family who had apparently been released but had been denied the right to a passport and continued to be kept under surveillance. He would like to know the attitude of the Moroccan authorities in such cases.

43. In regard to the three secret prisons, his latest information was that 30 of the 61 prisoners concerned had died but that one had been released and was going to the United States with his American wife. Mr. Atmani had promised to provide the Committee with information on that point and he would like to know the current situation.

44. The practice of detaining prisoners beyond the period of their sentences must be illegal as it represented arbitrary detention. He would like to know where those prisoners were being held and why they had not been released.

45. The Moroccan delegation had said that where there was abuse in cases of preventive detention there was a remedy but that in cases of error there was no remedy. He joined Mrs. Higgins in asking what the distinction was between error and abuse.

46. It appeared that article 291 of the Criminal Code provided that a statement by the police was accepted as evidence unless proof to the contrary was produced by the accused. That was not in accordance with the Covenant and in fact was virtually equivalent to conviction before trial.

47. Noting that paragraph 57 of the report of Morocco related to imprisonment for inability to fulfil a contractual obligation, he asked how article 11 was implemented in practice in Morocco.

48. Mr. FODOR said that paragraph 52 of the report seemed to imply that the duration of remand in custody depended on the penalty for the offence and not on either the complexity of the case or on the demands of the investigatory process. He would like to know how that situation could be reconciled with the principle of presumption of innocence.

49. It had also been reported that individuals who were not suspected of any crime had been detained by the police in order to compel the appearance of relatives who were the real suspects. He would like to know whether that practice continued to exist and whether statistics relating to it were available.

50. Mr. EL SHAFEI expressed pleasure that the Committee's dialogue with the delegation of Morocco had been resumed. He welcomed the provisions reportedly introduced to ensure the enjoyment of human rights in Morocco and the efforts made by Morocco's representatives in international forums in support of international instruments.

51. He noted that the report submitted by the Government of Morocco, in its discussion of liberty and security of person (art. 9 of the Covenant), made no reference to the supervision of detention centres but confined itself to a consideration of remand in custody. Remand in custody was the first stage of detention; it was and should continue to be restricted in time and ought to be carried out under judicial supervision. However, the period of remand in custody authorized before an extension had to be sought from the Prosecutor's Office, which under the 1959 Code of Criminal Procedure had been 48 hours for a serious crime or offence against the security of the State, had been doubled by an amendment to that Code adopted in 1962 and further extended by a 1972 law. The number of times such periods of remand could be renewed now also appeared to be unlimited. Such practices dangerously restricted the right to liberty and security of person. It therefore appeared that the law in force in Morocco was at variance with article 9 of the Covenant. What procedures were available to the Moroccan authorities to overcome those discrepancies? What steps were being taken by the authorities to avoid violations of the provisions regarding remand in custody? What rights were enjoyed by detainees? Were the authorities taking the necessary steps to apply United Nations principles to protect all persons in custody during their

detention? What steps were being taken by the authorities to inform the families of detainees? Did the authorities take disciplinary action against the persons concerned in cases where ill-treatment or torture of detainees had occurred?

52. He did not expect an immediate reply to all those questions but asked that they should be taken into account by the Moroccan delegation.

53. Mr. WENNERGREN, extending a warm welcome to the delegation of Morocco, said he appreciated the opportunity to continue the dialogue that had begun in November 1990.

54. He was concerned by the issue of secret detention centres, which, as Mr. Prado Vallejo had said, gave rise to the utmost concern from the point of view of human rights. The existence of such centres implied that the identity of detainees was kept secret and that the detainees themselves were held incommunicado without contact with the outside world or access to legal assistance or remedies. It was difficult to understand how such detention could exist in a State governed by the rule of law like Morocco. Although detention appeared to have been regarded as a matter solely for the Executive, the Constitution did not seem to make any provision for establishment by the Executive of secret detention or the use of extraordinary measures to protect State security. It was, perhaps, a firmly established constitutional practice in Morocco that the King had a certain number of prerogatives not explicitly acknowledged by the Constitution and would be fully entitled to establish secret detention by the exercise of such prerogatives. In that case, however, would it not also be true that the exercise of such prerogatives by the King should also be expected to comply with the Covenant?

55. Mr. ANDO, thanking the Moroccan delegation for resuming its dialogue with the Committee, welcomed the information it had provided on recent developments in the field of human rights protection.

56. He endorsed most of the questions that had been asked by other members of the Committee, and was particularly concerned, like Mr. Mavrommatis and Mr. Aguilar Urbina, about the possible existence of imprisonment for debt (para. 57 of the report).

57. He further considered that when reference was made to detainees and political prisoners, the existence of political prisoners of Western Saharan origin should not be forgotten. According to information in his possession, disappearance and even death of such political prisoners had occurred. He asked whether that information could be corroborated and, if so, whether any investigation had been carried out.

58. Mr. HERNDL said he was grateful to the delegation of Morocco for giving the Committee the opportunity to pursue the dialogue started the year before.

59. While acknowledging that the Government and Parliament of Morocco were endeavouring to improve a situation that had seemed unsatisfactory in certain respects in the past, he wished to address two technical issues in the report.

60. Firstly, with regard to the authority to remand in custody, he asked what time-limit to such custody applied in the case of an accused person liable, for the reasons given in paragraph 52 (a) of the report, to be held in custody for more than a month. Further, with reference to paragraph 52 (b), was there any ultimate limit to the amount of time a person could be held in custody as a result of authorized extensions of such custody?

61. Secondly, like Mr. Mavrommatis and Mr. Aguilar Urbina, he believed that even if the authorities did not in fact detain persons for non-fulfilment of contractual obligations, the fact that the technical means for such detention appeared to exist (para. 57 of the report) implied that Moroccan law was not fully in conformity with article 11 of the Covenant. The Government might be well advised to abolish the relevant legislation, in particular the Dahir of February 1961.

62. The CHAIRMAN invited the Moroccan delegation to respond to the comments and questions by members of the Committee.

63. Mr. ATMANI (Morocco) said that most of the questions put had already been addressed during consideration of section VI of the list of issues (Treatment of prisoners and other detainees) or would no doubt be taken up again under section VIII (Right to a fair trial).

64. To reply to Miss Chanet's question on administrative reforms, the Dahir on administrative tribunals had recently been approved by the Moroccan Parliament. As a result, seven administrative tribunals would shortly be established in the seven economic regions of Morocco. The measure was intended to decentralize authority, and relieve the Administrative Chamber of the Supreme Court, by referring to the new administrative tribunals all disputes in which the State and its component administrative units were involved. The judges forming the initial panel of magistrates to sit on such tribunals would be chosen by competitive examination from among recent graduates in public law and would then follow a two-year course specially designed for them, and including instruction in all aspects of human rights, at the National Institute for Legal Studies.

65. He informed the Committee that Mrs. Oufkir and her children had been freed; to his knowledge no administrative measures had been taken to restrict her freedom of movement. The question of the army officers in detention was in the process of settlement.

66. To answer a question from Mrs. Higgins, whenever an official acted wrongfully with intent there was abuse; when the act was unintentional it constituted an error. Several articles of the Moroccan Criminal Code, in particular articles 105, 106 and 107, made provision for compensation and redress, while book III of that Code dealt with crimes and offences against the liberties and rights of citizens, inter alia abuses by officials in the exercise of their duties. Compensation for damage suffered as a result of a wrongful judgement was covered by article 620 of the Code of Criminal Procedure. Further, the Code of Obligations and Contracts (Dahir of 12 August 1913) in its articles 61, 77, 78, 79 and 80, made provision for compensation for obligations resulting from faults and misdemeanours,

including coverage of the responsibility of the State for faults committed by its agents in the exercise of their duties. It provided for compensation, treatment and rehabilitation for the victims of illegal acts where their condition was a direct result of such acts. Everyone in Morocco was thus protected by the law against torture and other cruel, inhuman or degrading treatment or punishment and had access to legal remedies providing fair, equitable and adequate compensation.

67. The duration of police custody was in principle 24 hours, extendable to a maximum of 48 hours. Application for an extension had to be made to the Prosecutor's Office by the police, and all persons taken into custody by the police reported to that office within 24 hours. In cases involving the security of the State the police might hold a person in custody for 96 hours, but that period was only extendable a single time. When a case was under investigation, the period of remand in custody was two, not four months. That two-month period could be extended five times to an overall maximum detention in custody of one year. Law No. 6790, currently in the process of promulgation, provided that the family of a person held in police custody should be informed by the police or the Prosecutor's Office of the arrest within 24 hours. It also provided, in the case of minor offences, that police statements would be conclusive but that in the case of criminal offences, police statements would form only part of the body of evidence, it being the court proceedings that would decide the guilt or innocence of the accused.

68. He assured Mr. Sadi that practices in Morocco were in accordance with the law since otherwise they would be subject to criminal proceedings, which dealt severely with contempt of the law. Proceedings had already been taken against officials accused of abuses and a list of such persons had been submitted to the Committee at its previous session and also given to Amnesty International.

69. With respect to Mr. Prado Vallejo's remarks, the King had reaffirmed, at the opening of the autumn session of Parliament, that Morocco intended not only to respect human rights but also to implement them in practice. Morocco followed the Islamic tradition of tolerance, tolerance not only towards the Islamic community but also towards all other communities within Moroccan territory. Proof of that had been given by the support shown to the King on his visit to North America by the Jewish community in the United States and Canada. Moroccan law was in conformity with accepted standards. If any evidence could be produced of practices contrary to such standards he would be pleased to submit it to his Government. As to the secret detention centres mentioned by some members of the Committee, he could, as an official in the Ministry of Justice, affirm that none existed under the jurisdiction of that Ministry. No centre in contravention of the law was in existence at the present time. Any extension of a period of custody had to be requested in due form from a prosecutor's office and carried out by order of an examining magistrate. That order was moreover open to appeal.

70. The reform of the Criminal Code, which was in fact a reform of the Code of Criminal Procedure, was now complete. Following incorporation of the amendments attendant on adoption of Law No. 6790, which concerned the application of human rights, it would be submitted to Parliament.

71. A specific question had been asked with respect to political prisoners. There had been violations of law and order, acts of rebellion and action by gangs of miscreants in Morocco, but their perpetrators had been charged under the Criminal Code for breaches of ordinary law. Like many European countries, Morocco did not recognize political offences. When criminal offences were committed, regardless of whether they were politically motivated or not, their perpetrators were charged under the ordinary law. As far as torture was concerned, Morocco had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and torture was punishable under the Moroccan Criminal Code.

72. All persons had the right to leave Morocco and to return there. The Royal Decree of August 1981 had concerned detainees that had been arrested for violations of ordinary law that affected public order, the security of the State, acts of rebellion and gangs of miscreants.

73. In reply to Mr. Wennergren's questions about secret detention centres, the Ministry of Justice had various categories of prisons but he was not aware of any secret detention centres. A person placed in incommunicado detention could only be so committed on the orders of an examining magistrate at the request of the prosecutor, and appeals were possible. The royal right of pardon, which had its counterpart in countries throughout the world, was established by article 34 of the Constitution. In Morocco pardon could be granted in two ways, in the customary way on the occasion of national or religious holidays when the King was presented with a list of names by the Pardon Commission on the recommendation of the prison authorities, and when sought directly by any individual at any stage.

74. Imprisonment for debt, a question raised by Mr. Ando, could only occur after a series of other measures had been taken, such as seizure of assets. The only type of debt for which imprisonment was a penalty was debt to the State, either for taxation or customs reasons. The Moroccan fiscal authorities, like their counterparts throughout the world, had extensive powers where taxes were not paid.

75. Mr. Fodor had raised a question concerning the principle of presumption of innocence. That principle was fully respected in Morocco, where nobody could be declared guilty without a trial. Morocco followed the same rules as those adopted by almost all European countries with regard to preliminary inquiries. In reply to Mr. El Shafei, police custody was for a period of 24 hours and could be extended to 48 hours. It was subject to the control of the prosecutor whose duty it was not only to monitor custody but also to visit places of custody, which he could do at any time without notice. Cases of abuse were normally dealt with first of all by administrative measures but could also be the subject of criminal measures, and any official or other person found guilty of abuse could be ordered to pay compensation by a civil court.

76. Miss CHANET thanked Mr. Atmani for the information he had provided in reply to her questions. She was particularly pleased to hear of the reform of the administrative tribunals. She also welcomed the news about the special training of judges in the area of human rights. She took it from Mr. Atmani's assurances that there were no administrative restrictions on the freedom of

the Oufkir family and that they were now able to move around freely in Morocco and to travel abroad, in accordance with articles 9 and 12 of the Covenant. That news was particularly welcome. The position of the 61 persons sentenced 20 years previously continued to cause concern, however, in spite of Mr. Atmani's assertion that the matter was being settled. She wondered precisely what that meant and what had happened to those people in the meantime. Could the Committee assume that it would soon learn what their exact penal situation was? In response to her question on secret detention centres, Mr. Atmani had replied that he represented the Ministry of Justice and that no secret detention centre appeared on the Ministry's list. The Committee however was dealing with the report of Morocco and the Moroccan delegation should have a government representative who was in a position to provide the information requested. The Committee could not accept the lack of a reply from the Ministry of Justice as being the end of the matter.

77. Mr. AGUILAR URBINA congratulated the Moroccan Government on the measures taken to decentralize the administrative tribunals. He endorsed the sentiments expressed by Miss Chanet with regard to the Moroccan response to the issue of the 61 persons sentenced 20 years previously, and asked precisely what measures were being taken, particularly in view of the fact that more than half the people concerned continued to be detained in spite of having served their full sentences. Until they were released, the problem remained unsolved. He was particularly concerned about their continued intention and asked why detention could be extended indefinitely in those cases when remand in police custody could only be extended by 24 hours. He also endorsed Mr. Ando's comments concerning prisoners of Western Saharan origin. While the Government was to be congratulated on releasing 300 of them, why had the other 500 not been released and where were they? In that connection, the Moroccan delegation should bear in mind that where no information on a detainee existed, the Committee considered that it was dealing with a potential violation of article 6 on the right to life. On the subject of secret detention centres, he endorsed Miss Chanet's call for a reply from the Government.

78. Mr. WENNERGREN observed that he had learned very little from Mr. Atmani's replies to his questions. If the Ministry of Justice had no knowledge of the secret detention centres, some other Ministry or body must know. Mr. Atmani's reply had been the same as that given in November 1990 to his question concerning Tazmamart. A working paper by the Moroccan Human Rights Association had referred to the phenomenon of disappearance and the existence of secret detention camps as taboo subjects, just as he himself had described them in 1990. Perhaps Mr. Atmani's failure to answer the questions raised at the current session was because the subject was still taboo in Morocco.

79. Mr. PRADO VALLEJO expressed regret that the information given in response to his questions was incomplete and that many of the replies confirmed that there was indeed a contradiction between law and practice in Morocco. The situation was most obvious in the statement that no secret detention centres existed, and in the inability of the Moroccan delegation to deny that Tazmamart had once existed, even though many of its detainees had now been transferred elsewhere while others had died. He also had information on the Derb Moulay Cherif centre in Casablanca and the Villa Mokri in Rabat, centres

which were well known to exist. If information had not reached the Ministry of the Interior, it might suggest that such centres were perhaps in police or other hands, and beyond the control of the Ministry. It was very obvious however that if they did exist, they had some sort of official backing, not least in the form of economic support. He therefore urged the Moroccan delegation to check on those centres. As far as the assertion that there were no political detainees in Morocco was concerned, it was possible that such people had been imprisoned under criminal law. His particular region of Latin America was very familiar with political crimes and had a number of conventions and specific legislation which made a clear distinction between political prisoners and common criminals. According to the law of his country, the difference lay in the objectives of the persons concerned: attempting to subvert a government, for instance, was a political crime, but other offences with political aims, such as the assassination of a head of State, were treated as criminal offences. In view of those distinctions, he wondered whether the people who continued to be detained long after their prison term had been served were still political prisoners. In addition, he wished to know what remedy a detainee had, and what procedures could be implemented, to put an end to arbitrary and prolonged detention.

80. Mr. MAVROMMATIS said that many of his questions had gone unanswered while others had been answered in conjunction with replies to questions put by colleagues. He particularly sought a reply to his question on habeas corpus and to his question as to whether magistrates or judges were immune from civil and criminal proceedings for any act or omission in the course of their duties. Lastly, he sought further clarification on the remedies available to detainees who challenged the lawfulness of their detention.

81. Mr. SADI said that in response to his general question, he had been assured that there were no gaps between law and practice in Morocco just as there were no gaps between Moroccan law and the Covenant. Those were far-reaching assurances which no country to his knowledge had ever been in a position to make and he wondered whether Mr. Atmani wished to reconsider his replies and explain how the gaps which doubtless did exist had been dealt with in view of the new policy to promote human rights in Morocco.

82. Mr. ATMANI (Morocco), replying to the specific points raised, said that Miss Chanet had requested information on Mrs. Oufkir. As far as he knew, Mrs. Oufkir was free to leave Morocco if she so wished but he did not know what were her intentions on that score. On the subject of the army officers in detention, one had been released and the cases of the others were currently being settled. The Ministry of Justice had no knowledge of any secret detention centres. In reply to Mr. Wennergren's claim concerning the Moroccan Human Rights Association's serious allegations against the Moroccan Government, he said that there were no taboo subjects under Morocco's Penal Code and the Government, in full knowledge of the facts, strenuously denied the allegations. Mr. Prado Vallejo had also referred to the problem of secret detention centres: Derb Moulay Cherif was in fact a police station in Casablanca which could be visited by anyone; the Villa Mokri was currently the headquarters of the Moroccan Red Crescent in Rabat. Anyone accused of offences with political implications was sentenced under the Penal Code, and it was the Penal Code which determined the length of sentence and the type of crime committed.

There were no prosecutions except under the Penal Code. Crimes such as attempts on the life of the Head of State or a member of his family were not considered political crimes in Morocco any more than they were in countries such as France, Belgium and Italy, with which Morocco had signed conventions. He, too, could ask a number of questions on those lines: for instance, were crimes committed to fill the coffers of a fundamentalist sect in America to be considered as political or common crimes?

83. As far as habeas corpus was concerned, Morocco followed the European procedures and also provided various guarantees which did not exist in the penal procedures of a number of other States. However, different countries had different systems: there was the Napoleonic system, another system in South America, an Anglo-Saxon system, and so on. Morocco followed the Napoleonic system. There was now little or no difference between the Moroccan Penal Code and the law in countries such as France, Switzerland, Belgium and Italy.

84. Turning to the question raised by Mr. Mavrommatis, judges in Morocco did have certain immunities. They would not, for example, appear before the police courts but instead would appear before the Higher Council of the Magistrature, which would decide whether or not a judge had committed an offence. In the affirmative, he would appear before a higher court.

85. Turning to Mr. Sadi's points, he reiterated that there was no gap in Morocco between law and practice, although blunders were committed by the police as everywhere else. He personally knew of no proceedings brought against a judge in Morocco for serious irregularities, and judges were independent of the Executive and of the Ministry of Justice. The Ministry could only address instructions to the Prosecutor's Office and the Prosecutor was free to disregard them if he deemed them to be unfounded.

86. Mr. SERGHINI (Morocco) replying to the questions on the alleged disappearance of people from Western Sahara, said that the Moroccan authorities had been informed of a number of requests for files on disappeared persons from that area, and were examining all those cases with the greatest care. Those files, far from being reliable, had caused a number of problems. First of all, the figures varied enormously from 40 to 102 to 300 and now to 800. In fact a document recently received from a United States humanitarian organization had referred to 880 people missing. Preliminary studies had shown that those alleged disappearances dated back to a period when Morocco had had no administration over Western Sahara. The province had reverted to Morocco in 1976, but disappearances had occurred in 1975 when the territory had been administered by Spain, and there had been disappearances since then when the area had been under Mauritanian jurisdiction. Disappearances had also occurred in places which had reverted to Morocco but were still not fully under Morocco's control. Difficulties also arose from the fact that a large number of the people were from Tindouf and it had not been possible to confirm whether or not they were still in Tindouf or elsewhere. There was also a major problem regarding names and spellings. Such people were only identified by their tribe, and additional problems were caused by the fact that they were nomadic. Furthermore, there was a considerable problem of identification and there were almost certainly on all those lists of disappearances people who

were currently in Mauritania or Algeria, or who were even on the list of electors. The Committee could nevertheless be assured that the Moroccan authorities, in spite of the attendant difficulties, were trying to examine the cases, and from a file totalling 102 cases, had already determined that two persons had died from natural causes, and that six had been released; 94 cases were still being worked on for which there was as yet no information. It was particularly important to bear in mind that the United Nations peace plan for Western Sahara specifically aimed at solving the question of prisoners and missing persons, and he expressed the hope that more information could be provided on the subject in the near future.

87. The CHAIRMAN thanked the Moroccan delegation for its additional clarifications. The Committee had thus completed its consideration of section VII of the list of issues.

The meeting rose at 1 p.m.